

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA,

23 CR 150-2 (PMH)

5 -vs-

PLEA

6 EFRAIN FERNANDEZ,

7 Defendant.  
8 -----x

9 United States Courthouse  
10 White Plains, New York

11 March 28, 2023

12 Before, THE HONORABLE PHILIP M. HALPERN, District Judge

13 A P P E A R A N C E S:

14 DAMIAN WILLIAMS

15 United States Attorney for the  
Southern District of New York

16 BY: KATHRYN WHEELOCK

BENJAMIN KLEIN

17 Assistant United States Attorneys

18 LAW OFFICE OF MATTHEW GALLUZZO, PLLC

19 BY: MATTHEW GALLUZZO

Attorney for Defendant

20 ALSO PRESENT:

21 Peter Anderson - Court Interpreter (Spanish)  
22  
23  
24  
25

1 THE DEPUTY CLERK: United States of America against  
2 Efrain Fernandez.

3 Would the government please note your appearance?

4 MS. WHEELLOCK: Good afternoon, Your Honor. Kate  
5 Wheelock and Ben Klein for the United States.

6 THE DEPUTY CLERK: Defense counsel, please note your  
7 appearance.

8 MR. GALLUZZO: Good afternoon, Your Honor. Matthew  
9 Galluzzo for the defendant, Efrain Fernandez.

10 THE DEPUTY CLERK: Would the staff interpreter please  
11 note your appearance?

12 THE INTERPRETER: Yes. Good afternoon, Your Honor.  
13 Peter Anderson, staff interpreter.

14 THE COURT: All right. Counsel, Mr. Anderson,  
15 Mr. Fernandez. Good afternoon. Please be seated.

16 THE DEFENDANT: Good afternoon.

17 THE COURT: All right. I am going to sign a written  
18 order pursuant to Federal Rule of Criminal Procedure 5(f) dated  
19 today. Mr. Cangelosi will give this to you now.

20 Has the government received its verbal warning as of  
21 yet?

22 MS. WHEELLOCK: Yes. We received it at the plea of the  
23 defendant's co-defendant.

24 THE COURT: Okay. Terrific.

25 Mr. Galluzzo, do I understand correctly that at the

1 appropriate moment your client is prepared to enter a plea to  
2 the lesser-included charge contained in Count One of the  
3 Information?

4 MR. GALLUZZO: Yes, Your Honor. That's correct.

5 THE COURT: All right. So we will first do the Waiver  
6 of Indictment.

7 Have you given a copy of the Information to your  
8 client, Mr. Galluzzo? Has it been translated for him?

9 MR. GALLUZZO: Yes, Your Honor.

10 THE COURT: All right. Did you explain to  
11 Mr. Fernandez the charge contained in Count One against him?

12 MR. GALLUZZO: I have, Your Honor.

13 THE COURT: Mr. Fernandez, the document that contains  
14 the charge to which you have indicated you wish to plead guilty  
15 is called an information and has been issued by the United  
16 States attorney. Have you received a copy of the Information?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Has it been read or translated to you and  
19 for you?

20 THE DEFENDANT: Yes. It was read to me, and it was  
21 translated for me.

22 THE COURT: All right. Did you discuss the charge  
23 contained in the Information with your attorney?

24 THE DEFENDANT: Yes.

25 THE COURT: Because the crime charged in the

1 Information is a felony, you have a constitutional right to  
2 require the government to present evidence to a grand jury to  
3 see whether the grand jury would vote to charge you with that  
4 crime. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: The grand jury is a group of at least 16,  
7 but not more than 23, citizens. Before you could be indicted,  
8 at least 12 of them would have to agree that there was probable  
9 cause to believe that you -- a crime was committed and that you  
10 committed that crime. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If the grand jury voted to charge you, the  
13 document they would issue would be called an indictment. Do you  
14 understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you wish to give up your right to have  
17 your case presented to the grand jury?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did you discuss that decision with your  
20 attorney?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I have been given a Waiver of Indictment  
23 form that appears to have your signature above the typed words  
24 "Efrain Fernandez, defendant." Is that your signature on the  
25 Waiver of Indictment?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I also notice your attorney, Mr. Galluzzo,  
3 signed on your behalf. Did you ask him to sign on your behalf  
4 as well?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Before you signed the Waiver of  
7 Indictment, did you discuss it with your attorney?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did you sign the waiver voluntarily?

10 THE DEFENDANT: Voluntarily, freely.

11 THE COURT: Is he asking me a question or is that his  
12 answer?

13 THE INTERPRETER: No, Your Honor. He said "freely and  
14 voluntarily."

15 THE COURT: Okay. When you signed the waiver, did you  
16 understand you were giving up your right to be indicted by a  
17 grand jury?

18 THE DEFENDANT: Yes.

19 THE COURT: Did anyone threaten you or force you to  
20 give up that right?

21 THE DEFENDANT: No.

22 THE COURT: All right. Mr. Cangelosi, we will make  
23 the Waiver of Indictment Court Exhibit 1.

24 I find that Mr. Fernandez has knowingly and  
25 voluntarily waived his right to be indicted by a grand jury.

1 The Information will be accepted for filing.

2 Now, Mr. Galluzzo, we are going to arraign first on  
3 the not-guilty plea, and then you will make an application. All  
4 right?

5 MR. GALLUZZO: That's fine.

6 THE COURT: Mr. Fernandez, you have already indicated  
7 to me that you received a copy of the Information we have been  
8 discussing and read it and reviewed it with your attorney; is  
9 that correct?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you waive the public reading of the  
12 Information or do you want me to read it to you?

13 THE DEFENDANT: I do waive it.

14 THE COURT: Mr. Fernandez, as to the charge in the  
15 Information, how do you plead at this juncture, guilty or not  
16 guilty?

17 (Pause)

18 MR. GALLUZZO: I am sorry, Your Honor. I am just  
19 explaining this procedure that we are going to be doing. On his  
20 behalf, I will enter a not guilty plea at this stage with the  
21 understanding that there will be a guilty plea to ensue.

22 THE COURT: Is that your wish, Mr. Fernandez?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. The clerk will then enter a  
25 guilty plea.

1           Now, Mr. Galluzzo -- and I guess we have to figure out  
2 how do this better some day, but not today.

3           MR. GALLUZZO: All right.

4           THE COURT: Mr. Galluzzo, does your client have an  
5 application?

6           MR. GALLUZZO: Yes, Your Honor. My client does wish  
7 to enter a plea of guilty today pursuant to a plea agreement  
8 that has been previously signed and delivered to the Court.

9           THE COURT: Mr. Fernandez, as you heard, I have been  
10 informed that you wish to plead guilty to the one-count  
11 Information; is that correct?

12          THE DEFENDANT: Yes.

13          THE COURT: With respect to Count One, I understand  
14 that you intend to plead guilty to the lesser-included offense  
15 of conspiracy to distribute and possess with intent to  
16 distribute five grams and more of methamphetamine, its salts,  
17 isomers, and salts of its isomers, and 40 grams and more of  
18 mixtures and substances containing a detectable amount of  
19 fentanyl in violation of Title 21, United States Code,  
20 Section 841(b) (1) (B) .

21          Before I can accept your guilty plea, I need to ask  
22 you certain questions. It's very important to me that you  
23 answer these questions honestly and completely. I'm doing this  
24 so I can make sure you understand your rights. I also want to  
25 make sure you understand -- I want to make sure -- let me start

1 over.

2 I want to make sure that you are pleading guilty  
3 voluntarily and of your own free will and that you are pleading  
4 guilty because, in fact, you are guilty and not for some other  
5 reason, and that you fully understand the consequences of your  
6 plea.

7 If at any point you don't understand my questions or  
8 you want to speak to your attorney, please say so because it's  
9 very important to me that you understand each and every question  
10 before you answer it. Will you do that, please?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. At this time I am going to ask  
13 Mr. Cangelosi to place you under oath.

14 (Defendant, Efrain Fernandez, sworn)

15 THE DEFENDANT: Yes, sir.

16 THE DEPUTY CLERK: Please be seated.

17 THE COURT: Mr. Fernandez, you are now under oath,  
18 which means that if you answer any of my questions falsely, you  
19 could later be prosecuted for perjury or for making a false  
20 statement. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Tell me your full name, please.

23 THE DEFENDANT: Efrain Fernandez Hernandez.

24 THE COURT: How old are you?

25 THE DEFENDANT: I am 48.



1 THE COURT: How far did you go in school?

2 THE DEFENDANT: Preparatory school.

3 THE COURT: And where did you go?

4 THE DEFENDANT: In Mexico.

5 THE COURT: Are you currently, or have you recently  
6 been, under the care of a doctor or psychiatrist for any reason?

7 THE DEFENDANT: No.

8 THE COURT: Have you ever been treated or hospitalized  
9 for any mental illness or mental health problems?

10 THE DEFENDANT: No.

11 THE COURT: Have you ever been treated or hospitalized  
12 for any drug or alcohol abuse or addiction?

13 THE DEFENDANT: No.

14 THE COURT: Have you taken any drugs, medicine or  
15 pills in the last 24 hours?

16 THE DEFENDANT: No.

17 THE COURT: Have you consumed any alcohol in the last  
18 24 hours?

19 THE DEFENDANT: No.

20 THE COURT: Is your mind clear today?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand what's happening here  
23 today, Mr. Fernandez?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you had enough time and opportunity

1 to discuss your case with your attorney?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you discussed with him the charges  
4 against you, including any possible defenses that you might  
5 have?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you discussed with him the  
8 consequences of entering a plea of guilty?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you satisfied with your attorney's  
11 representation of you?

12 THE DEFENDANT: Yes.

13 THE COURT: Counsel, do either of you have any doubt  
14 as to Mr. Fernandez's competence to enter a guilty plea at this  
15 time? Ms. Wheelock?

16 MS. WHEELLOCK: No, Your Honor.

17 THE COURT: Mr. Galluzzo?

18 MR. GALLUZZO: No, I have not.

19 THE COURT: Based on the defendant's responses to my  
20 questions, and my observations of his demeanor, I find that he  
21 is fully competent to enter an informed guilty plea at this  
22 time.

23 Mr. Fernandez, I am now going to explain to you  
24 certain rights that you have under the Constitution and the laws  
25 of the United States. These are the rights you will be giving

1 up if you enter a plea of guilty. Again, please tell me if  
2 there is anything at all you don't understand, and either I or  
3 your attorney will explain the matter more fully.

4           You have the right to plead not guilty to the charge  
5 contained in this Information or persist in your previously  
6 entered plea of not guilty. Do you understand that right?

7           THE DEFENDANT: Yes.

8           THE COURT: If you plead not guilty, you have the  
9 right to a speedy and public trial by an impartial jury on the  
10 charge contained in the Information. Do you understand that  
11 right?

12          THE DEFENDANT: Yes.

13          THE COURT: At that trial, you would be presumed to be  
14 innocent, and the government would be required to prove you  
15 guilty by competent evidence beyond a reasonable doubt before  
16 you could be found guilty. That means you would not have to  
17 prove that you were innocent. Do you understand that right?

18          THE DEFENDANT: Yes, sir.

19          THE COURT: If there were a jury trial, you could not  
20 be convicted unless a jury of 12 people unanimously agreed that  
21 you were guilty beyond a reasonable doubt. Do you understand  
22 that right?

23          THE DEFENDANT: Yes.

24          THE COURT: At that trial, and at every other stage of  
25 the case, you would have the right to be represented by an

1 attorney, and if you could not afford an attorney, the Court  
2 would appoint an attorney to represent you. Do you understand  
3 that right?

4 THE DEFENDANT: Yes.

5 THE COURT: During a trial, the witnesses for the  
6 government would have to come to court and testify in your  
7 presence, and your lawyer could confront and cross-examine those  
8 witnesses, and object to evidence offered by the government. Do  
9 you understand all of that?

10 THE DEFENDANT: Yes.

11 THE COURT: At a trial, your lawyer could also offer  
12 evidence on your behalf, and you would have the right to use  
13 subpoenae to compel witnesses to testify, and to obtain evidence  
14 to be offered in your defense. Do you understand that right?

15 THE DEFENDANT: Yes.

16 THE COURT: At a trial, you would have the right to  
17 testify if you chose to do so, but you would also have the right  
18 not to testify. If you chose not to testify, that could not be  
19 used against you in any way. No inference or suggestion of  
20 guilt could be drawn from the fact that you did not testify. Do  
21 you understand all of that?

22 THE DEFENDANT: Yes.

23 THE COURT: If you were convicted at a trial, you  
24 would have the right to appeal that verdict to a higher court.  
25 Do you understand that right?

1 THE DEFENDANT: Yes.

2 THE COURT: And do you also understand that even now  
3 you have the right to change your mind, persist in your not-  
4 guilty plea, and go to trial?

5 THE DEFENDANT: Yes.

6 THE COURT: But if you do plead guilty, and if I  
7 accept your plea, you will be giving up your right to a trial  
8 and all the other rights that go with it that I have just  
9 described other than your right to an attorney. If you plead  
10 guilty, there will be no trial, and I will enter a judgment of  
11 guilty and sentence you on the basis of your guilty plea after  
12 considering a presentence report prepared by the Probation  
13 Department and after considering any submissions I get from you,  
14 your attorney, and the government. Do you understand all of  
15 that?

16 THE DEFENDANT: Yes.

17 THE COURT: Finally, if you do plead guilty, you will  
18 be giving up your right not to incriminate yourself, and I am  
19 going to ask you some questions this afternoon about what you  
20 did in order to satisfy myself that you are, in fact, guilty as  
21 charged. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Mr. Fernandez, do you understand that the  
24 government is willing to accept a guilty plea from you to the  
25 lesser-included offense of conspiracy to distribute and possess

1 with intent to distribute five grams and more of  
2 methamphetamine, its salts, isomers, and salts of its isomers,  
3 and 40 grams and more of mixtures and substances containing a  
4 detectable amount of fentanyl in violation of 21 United States  
5 Code 841(b)(1)(B)?

6 THE DEFENDANT: Yes.

7 THE COURT: Ms. Wheelock, what are the essential  
8 elements of the lesser-included offense charged in Count One of  
9 the Information?

10 MS. WHEELLOCK: Your Honor, the elements of the 18  
11 U.S.C. 841(b)(1)(B) conspiracy are: First, that two or more  
12 persons agreed to violate the federal drug laws; second, that  
13 the defendant knowingly and voluntarily entered into the  
14 conspiracy; and third, that the objective of the conspiracy was  
15 to distribute five grams and more of methamphetamine, its salts,  
16 isomers, and salts of its isomers, and 40 grams and more of  
17 mixtures and substances containing a detectable amount of  
18 fentanyl.

19 THE COURT: Thank you, Ms. Wheelock.

20 Mr. Fernandez, do you understand that if you did not  
21 plead guilty to the lesser-included offense in Count One of the  
22 Information, that the government would have to prove each and  
23 every element of that charge as described by Assistant United  
24 States Attorney Wheelock beyond a reasonable doubt and at a  
25 trial?

1 THE DEFENDANT: Yes.

2 THE COURT: I am now going to tell you about the  
3 maximum possible penalty for this offense.

4 As to the lesser-included offense in Count One, the  
5 maximum possible penalty is a term of imprisonment of 40 years,  
6 followed by a lifetime term of supervised release, plus a  
7 maximum fine of the greatest of \$5 million, or twice the gross  
8 pecuniary gain derived from the offense, or twice the gross  
9 pecuniary loss to a person other than yourself resulting from  
10 the offense, plus a mandatory special assessment of \$100.

11 Do you understand that these are the maximum possible  
12 penalties for this offense?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you further understand that the crime  
15 to which you are pleading guilty not only has a maximum penalty,  
16 but also carries a mandatory minimum term of imprisonment and a  
17 mandatory minimum term of supervised release?

18 THE DEFENDANT: Yes.

19 THE COURT: Specifically, the lesser-included offense  
20 in Count One carries a mandatory minimum term of five years of  
21 imprisonment and four years of supervised release. That means  
22 that even if I wanted to, I would not be allowed to sentence you  
23 to less than the mandatory minimum term of imprisonment and  
24 supervised release. Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: In this case, even though there is a  
2 mandatory minimum term of a sentence of five years'  
3 imprisonment, you could be sentenced below the mandatory minimum  
4 under the so-called Safety Valve statute if you comply with  
5 certain conditions. You are eligible for that kind of treatment  
6 only if certain facts apply to your case. It's up to me to  
7 decide whether they do apply, and I can't make a decision about  
8 that until the time of your sentence. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Also, as part of your sentence, I can  
11 order you to pay restitution to any person or entity injured as  
12 a direct result of your criminal conduct. Do you understand  
13 that?

14 THE DEFENDANT: Yes.

15 THE COURT: Ms. Wheelock, I see there is a restitution  
16 element in the plea agreement. Is the government going to  
17 pursue it?

18 MS. WHEELOCK: Your Honor, we don't expect to pursue  
19 restitution.

20 THE COURT: All right. Mr. Fernandez, I mentioned  
21 supervised release a moment ago. Supervised release means that  
22 if I sentence you to prison to be followed by a term of  
23 supervised release, you will be subject to supervision by the  
24 Probation Department after your release. If you violated any of  
25 the conditions of supervised release, the term of supervised



1 release could be revoked, and you could be returned to prison  
2 without a jury trial to serve additional time even beyond your  
3 original sentence. If that happened, you would not be given  
4 credit for the time served in prison on your original sentence  
5 or for any time spent on supervised release. Do you understand  
6 all of that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You should also understand that parole has  
9 been abolished in the federal system, so that you are sentenced  
10 to prison, you will not be released early on parole. Do you  
11 understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Mr. Fernandez, are you a citizen of the  
14 United States?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you further understand that if I accept  
17 your guilty plea, and I adjudge you guilty, that adjudication  
18 may deprive you of valuable civil rights such as: The right to  
19 vote, the right to hold public office, the right to serve on a  
20 jury, the right to possess any kind of firearm, and the right to  
21 hold certain professional licenses?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you talked to your attorney about how  
24 the federal sentencing guidelines apply to your case,  
25 Mr. Fernandez?

1 THE DEFENDANT: Yes.

2 THE COURT: In determining a sentence, I am required  
3 to consider the guidelines, which are a set of rules and  
4 recommendations for determining an appropriate sentence. I have  
5 to calculate the applicable guidelines range, consider that  
6 range, and determine whether there should be an upward or  
7 downward departure from that range.

8 In addition, I am required to consider the sentencing  
9 factors set forth in Section 3553(a) of Title 18 of the United  
10 States Code and to impose a sentence that I best believe  
11 satisfies the purposes of the criminal law, even if that  
12 sentence is higher or lower than what the guidelines recommend.  
13 Do you understand all of that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you also understand that I will not be  
16 able to determine how the guidelines apply to your case until  
17 after a presentence report has been prepared by the probation  
18 office, and both you and the government have had the chance to  
19 review, comment on, and object to anything in that report?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you also understand that if your  
22 attorney or anyone else has attempted to predict what your  
23 sentence will be, that prediction could be wrong?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I am telling you this because you need to

1 understand that no one, not your attorney, not the government's  
2 attorney, can be sure right now what your sentence will be.  
3 It's my job to decide what your sentence will be, and I'm not  
4 going to do that right now. Instead, I am going to wait until  
5 after the presentence report is completed, and I have ruled on  
6 any challenges to the report, calculated the guidelines range,  
7 determined whether there are any grounds to depart from that  
8 range, and considered the Section 3553(a) factors. So at this  
9 point, nobody can predict what the sentence will be in your  
10 case. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you also understand that even if your  
13 sentence is different from what your attorney or anyone else  
14 told you it might be, or if it's different from what you expect  
15 it to be, or from what's contained in your plea agreement, once  
16 you have pled guilty, I will not let you withdraw your guilty  
17 plea?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Fernandez, has anyone threatened you  
20 or coerced you in any way or tried to force you to plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anyone other than the prosecutor  
23 promised you anything or offered you anything in order to get  
24 you to plead guilty?

25 THE DEFENDANT: No.

1 THE COURT: I have been given a letter dated  
2 February 2, 2023, from the government's attorney to your  
3 attorney, which is a plea agreement between you and the  
4 government. Mr. Cangelosi, we will mark the original of the  
5 plea agreement Court Exhibit 2.

6 I want to verify the signatures on page 7,  
7 Mr. Fernandez. Below the typed words "agreed and consented to"  
8 and above the typed words "Efrain Fernandez," there is a  
9 signature. Is that your signature?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: I also see that you asked your attorney to  
12 sign on your behalf. Did you authorize Mr. Galluzzo to sign on  
13 your behalf?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And did you see the Spanish language  
16 interpreter, Mr. Anderson, sign as well in connection with this  
17 plea?

18 THE INTERPRETER: May I say something, Your Honor?

19 THE COURT: Sure.

20 THE INTERPRETER: I did not translate the plea  
21 agreement for the defendant.

22 THE COURT: Oh, okay. Do you know who did?

23 MR. GALLUZZO: Yes. As a point of fact, Your Honor,  
24 that was a court-approved Spanish interpreter. His name is Jose  
25 Carlos Venant.

1 THE COURT: Did you see Mr. Venant sign as the  
2 interpreter?

3 THE DEFENDANT: Yes.

4 THE COURT: And did he, in fact, interpret the plea  
5 agreement for you?

6 THE DEFENDANT: Perfectly well.

7 THE COURT: Did you read or did you go through this  
8 agreement before you signed it?

9 THE DEFENDANT: Yes. He translated it for me.

10 THE COURT: All right.

11 MR. GALLUZZO: To be clear, Your Honor, a word-for-  
12 word Spanish translation was written of this agreement, and so  
13 he has received a copy of that from this interpreter. It was  
14 also read to him in his presence in Spanish.

15 THE COURT: Thank you.

16 So you received a translated copy of the plea  
17 agreement, correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you read it and reviewed it in detail  
20 before you signed it, correct?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you discuss it with your attorney  
23 before you signed it?

24 THE DEFENDANT: Yes.

25 THE COURT: Did you discuss every aspect of it with

1 your attorney?

2 THE DEFENDANT: Yes.

3 THE COURT: Did you understand the agreement at the  
4 time you signed it?

5 THE DEFENDANT: Yes.

6 THE COURT: Is this plea agreement the entire  
7 agreement between you and the government?

8 THE DEFENDANT: Yes.

9 THE COURT: Is there any other agreement, promise or  
10 understanding between you and the government that's been left  
11 out of this agreement?

12 THE DEFENDANT: No.

13 THE COURT: Did anyone threaten or coerce you or force  
14 you to enter into this plea agreement?

15 THE DEFENDANT: No.

16 THE COURT: Other than what's contained in the plea  
17 agreement, has anyone promised you anything or offered you any  
18 inducement to plead guilty or to enter into this plea agreement?

19 THE DEFENDANT: No.

20 THE COURT: Has anyone made a promise to you as to  
21 what your sentence will be?

22 THE DEFENDANT: No.

23 THE COURT: It appears that you and the government  
24 have stipulated to, meaning you agreed to, the appropriate  
25 calculation of your sentencing range under the guidelines. Is

1 that your understanding, Mr. Fernandez?

2 THE DEFENDANT: Yes.

3 THE COURT: According to the stipulation, your  
4 guidelines range is 135 to 168 months of imprisonment.

5 Do you understand that the guidelines stipulation in  
6 the plea agreement is binding on you, and it's binding on the  
7 government, but it is not binding on me?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you also understand that regardless of  
10 what you and the government have agreed to, I'm going to make my  
11 own determination as to what your guidelines range is?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you also understand that under certain  
14 circumstances both you and the government have the right to  
15 appeal any sentence that I might impose subject, of course, to  
16 the terms of the plea agreement?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: There appears to be what the lawyers call  
19 an appeal waiver on pages 4 and 5 of the plea agreement. That's  
20 the English version. Do you understand that under the plea  
21 agreement, you are giving up your right to appeal or otherwise  
22 challenge your sentence so long as I sentence you at or below  
23 the stipulated guidelines range of 135 to 168 months of  
24 imprisonment?

25 THE DEFENDANT: Yes.

1 THE COURT: Ms. Wheelock, is there going to be a civil  
2 forfeiture here in connection with this plea?

3 MS. WHEELOCK: Your Honor, we don't expect to pursue  
4 forfeiture.

5 THE COURT: But in any event, Mr. Fernandez, did you  
6 discuss the forfeiture provision with your attorney?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you admit the forfeiture allegations  
9 with respect to Count One of the Information and agree to  
10 forfeit to the United States pursuant to Title 21, United States  
11 Code, Section 853, a sum of money in an amount to be determined  
12 representing proceeds traceable to the commission of the charge  
13 in Count One of the indictment?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You understand what forfeiture means,  
16 right?

17 THE DEFENDANT: Yes.

18 THE COURT: Forfeiture means you are giving something  
19 up. Under this section of the plea agreement, you are  
20 consenting to give up a money judgment against you in an amount  
21 to be determined, which represents the amount of proceeds  
22 traceable to the offense. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: It's very possible in the future, while  
25 the government has indicated they are not going to pursue



1 forfeiture, they still have a perfect right to between now and  
2 sentencing. So if they do, at an appropriate time you would be  
3 signing and agreeing to a money judgment whereby judgment would  
4 be entered against you in a certain amount?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Fernandez, have you clearly understood  
7 everything that's happened here so far today?

8 THE DEFENDANT: Yes.

9 THE COURT: Now that you have been advised of the  
10 charge against you, the possible penalties that you face, and  
11 the rights you are giving up, is it still your intention to  
12 plead guilty to the lesser-included offense in Count One of the  
13 Information?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: With respect to the lesser-included  
16 offense in Count One of the Information, Mr. Fernandez, how to  
17 you plead, guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Are you, in fact, guilty of that charge?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you pleading guilty voluntarily and of  
22 your own free will?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Ms. Wheelock, would you kindly summarize  
25 what the government would expect to prove if the matter went to

1 trial?

2 MS. WHEELLOCK: Yes. If this case were to proceed to  
3 trial, the government would prove beyond a reasonable doubt that  
4 the defendant conspired with others to distribute five grams and  
5 more of methamphetamine, its salts, isomers and salts of its  
6 isomers, and 40 grams and more of mixtures and substances  
7 containing a detectable amount of fentanyl.

8 The government's proof would include, among other  
9 things: Testimony from a confidential informant working with  
10 the DEA about arranging to purchase a substantial quantity of  
11 narcotics, including methamphetamine, and meeting the defendant  
12 and a coconspirator at a farm in Pine Island to complete the  
13 sale; recordings related to the transaction, including a  
14 recording of the CI meeting the defendant's coconspirator to  
15 purchase narcotics; law enforcement testimony regarding a search  
16 of the truck during which they found the defendant standing next  
17 to four cylinders wrapped in brown duct tape each containing  
18 approximately one pound of methamphetamine; law enforcement  
19 testimony regarding a search of the truck during which officers  
20 recovered fake buy money given to the defendant's  
21 coconspirators, and additional narcotics; physical evidence,  
22 including narcotics the confidential informant purchased from  
23 the defendant and recovered from his truck; and lab tests  
24 showing that these narcotics were approximately 13 kilograms of  
25 methamphetamine and approximately one kilogram of fentanyl.

1 THE COURT: All right. Thank you.

2 Mr. Galluzzo, there is no issue of venue here in the  
3 Southern District of New York being met, and that's agreed to,  
4 am I correct?

5 MR. GALLUZZO: I don't believe there will be, Your  
6 Honor.

7 THE COURT: I am sorry. I didn't hear.

8 MR. GALLUZZO: I don't believe there is any issue as  
9 to venue, no.

10 THE COURT: Are you prepared to waive it now?

11 MR. GALLUZZO: I am.

12 THE COURT: All right. Thank you.

13 Mr. Fernandez, did you hear what Assistant United  
14 States Attorney Wheelock just said?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is what she said substantially accurate?

17 THE DEFENDANT: That's correct.

18 THE COURT: All right. Would you tell me now in your  
19 own words what you did to make you believe that you are guilty  
20 of this charge?

21 THE DEFENDANT: So I made a bad decision by agreeing  
22 to participate in driving a truck from California to New York  
23 that had drugs in it, just like the prosecutor said, together  
24 with another person hoping to make some easy money.

25 So because of my bad decisions, I find myself here.

1 THE COURT: All right. Let's just see if we can get a  
2 little more precise. The other individual you were with was  
3 Mr. Munoz?

4 THE DEFENDANT: Yes.

5 THE COURT: And you drove the truck with Mr. Munoz --

6 THE DEFENDANT: Yes.

7 THE COURT: -- in April of 2022 and in May of 2022?

8 THE DEFENDANT: Yes.

9 THE COURT: And while you were driving your truck, you  
10 knew there was methamphetamine, its salts, isomers, and salts of  
11 its isomers in the truck, right?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you knew there were 40 grams or more  
14 of fentanyl in that truck, right?

15 THE DEFENDANT: Yes.

16 THE COURT: And on May 2nd you arrived at a farm here  
17 in New York?

18 THE DEFENDANT: Yes.

19 THE COURT: With the truck?

20 THE DEFENDANT: Yes. That's correct.

21 THE COURT: And the drugs in the truck?

22 THE DEFENDANT: Yes.

23 THE COURT: And a buyer appeared and took the drugs  
24 from you and Mr. Munoz and gave you a backpack full of money,  
25 right?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you put the money in the truck in one  
3 of the drawers in the truck?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Compartments. And you made a deal with  
6 Mr. Munoz; you were going to make 10,000 bucks for this transfer  
7 of the drugs, right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you knew what you were doing; you  
10 entered into that agreement with Mr. Munoz knowingly, right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you knew you were going to distribute  
13 illegal drugs, methamphetamine and fentanyl, right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you knew the purpose of entering into  
16 the deal with Mr. Munoz was to distribute illegal drugs?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And while you were there, law enforcement  
19 officers showed up, correct?

20 THE DEFENDANT: Yes.

21 THE COURT: And you consented to allow the law  
22 enforcement officers to search the truck?

23 THE DEFENDANT: Yes, at all times.

24 THE COURT: All right. And when they searched the  
25 truck, they found you standing next to these wrapped containers

1 containing more than a pound of methamphetamine, right?

2 THE DEFENDANT: Yes.

3 THE COURT: And when you and Mr. Munoz accepted that  
4 backpack full of money, you thought that was United States  
5 currency that was being transferred to you in exchange for the  
6 sale of these drugs to the confidential informant?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: At the time you were doing all of this,  
9 Mr. Fernandez, you knew what you were doing was wrong, right?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You knew it was against the law?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did anyone threaten or force you to do any  
14 of these things?

15 THE DEFENDANT: No, sir.

16 THE COURT: Counsel, are there any additional  
17 questions you would like me to ask Mr. Fernandez?

18 Ms. Wheelock?

19 MS. WHEELLOCK: No.

20 THE COURT: Mr. Galluzzo?

21 MR. GALLUZZO: No. Thank you, Your Honor.

22 THE COURT: Ms. Wheelock, do you believe there is a  
23 sufficient factual predicate for a guilty plea here?

24 MS. WHEELLOCK: Yes.

25 THE COURT: Do you, Mr. Galluzzo, concur?

1 MR. GALLUZZO: I do, Your Honor.

2 THE COURT: Do you know of any defense, Mr. Galluzzo,  
3 that would be valid that would prevail at trial or any reason  
4 why your client should not be permitted to plead guilty at this  
5 time?

6 MR. GALLUZZO: No, Your Honor.

7 THE COURT: Based on Mr. Fernandez's responses to my  
8 questions, my observations of his demeanor, I find that he  
9 understands his rights and is waiving them knowingly and  
10 voluntarily with an understanding of the consequences of his  
11 guilty plea, including the potential sentence that may be  
12 imposed.

13 I further find that the guilty plea is voluntary and  
14 did not result from force, threats or promises other than the  
15 promises in the plea agreement; that Mr. Fernandez has admitted  
16 he is guilty as charged of the lesser-included offense in Count  
17 One of the Information, and that the plea is supported by an  
18 independent factual basis for each and every element of the  
19 crime charged.

20 Accordingly, I accept the guilty plea, and I adjudge  
21 the defendant guilty on the charge of the lesser-included  
22 offense in Count One of this Information.

23 I am going to direct that probation -- the Probation  
24 Department conduct a presentence investigation and prepare a  
25 presentence investigation report.

1           Mr. Fernandez, you are going to be interviewed by a  
2 probation officer as part of that presentence investigation  
3 process. Your lawyer will be with you during that interview.  
4 Please make certain that anything you say to the probation  
5 officer is truthful and accurate, and the reason I say that is  
6 the presentence report is very important to me in deciding what  
7 sentence to impose on you. So it's important that you read the  
8 report -- or have it translated for you -- carefully and discuss  
9 it with your attorney before your sentencing date. If there are  
10 any mistakes in the report, tell Mr. Galluzzo about them so that  
11 he can bring them to my attention before I impose sentence.

12           Also, both you, and the government, and your lawyer  
13 will have the right to speak on your behalf and against you  
14 before I impose sentence. I see we've pre-selected a date  
15 subject to counsel's availability of August 29th at 3:00 p.m.  
16 Does that work?

17           MS. WHEELLOCK: Yes, Your Honor.

18           (Pause)

19           THE COURT: You can tell me you're going on vacation.

20           MR. GALLUZZO: I am trying to figure out when I am  
21 going on vacation. I don't think that's a bad date for me, Your  
22 Honor. I think that's okay.

23           THE COURT: Well, I am not inclined to move  
24 sentencings because I have an enormous number of them --

25           MR. GALLUZZO: That's why --



1 THE COURT: -- of all of these cases I have, but if  
2 for some reason, Mr. Galluzzo, you get back to the ranch and you  
3 figure out that you have a preplanned something --

4 MR. GALLUZZO: Right.

5 THE COURT: -- you can write me, and I will consider  
6 it.

7 MR. GALLUZZO: All right. I am sure my wife is going  
8 to be mad at me, but I think that's okay for now. So I will say  
9 yes.

10 THE COURT: You will get a chance with me if you have  
11 a preplanned vacation. I don't want your wife mad at you.

12 MR. GALLUZZO: Thank you, Your Honor.

13 THE COURT: And you can tell her I said that.

14 MR. GALLUZZO: Okay.

15 THE COURT: We will make it August 29th at 3:00 p.m.

16 MR. GALLUZZO: All right.

17 THE COURT: The deadline for any written submissions  
18 is three weeks before that. The government's response is due  
19 two weeks before that. And I ask in every case that counsel  
20 address the 3553(a) factors sequentially, and if you have any  
21 other arguments under the guidelines, to do that separately.  
22 Okay?

23 MR. GALLUZZO: I understand.

24 THE COURT: All right. Mr. Fernandez is remanded.

25 Is there anything else I can do for either of you

1 today?

2 MS. WHEELLOCK: No.

3 MR. GALLUZZO: No. Thank you, Your Honor.

4 THE COURT: All right. Take good care, Mr. Fernandez.

5 THE DEPUTY CLERK: All rise. Court is in recess.

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